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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,877	03/04/2004	Rebecca Snow	1128.2650002/TGD/RLP	4811
26111	7590	12/09/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			NAKARANI, DHIRAJLAL S	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/791,877	SNOW, REBECCA
	Examiner D. S. NAKARANI	Art Unit 1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-9,12-16 and 25-39 is/are pending in the application.
 - 4a) Of the above claim(s) 12,13,15,16 and 25-39 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2 and 4-9 is/are rejected.
- 7) Claim(s) 14 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date March 4, 2004.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1, 2, 4-9 and 12-16 are, drawn to a moldable article, classified in class 428, subclass 304.4+.
 - II. Claims 25-39 are, drawn to a method, classified in class 264, subclass 176.1+.
2. The inventions are distinct, each from the other because:

Inventions I and II are independent and distinct from each other because the method of invention II does not result in the moldable layer consisting essentially of foamed ethyl vinyl acetate copolymer.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Election of Group I further requires election of species as follows.
5. Claims 1, 2 and 4-9 are generic to a plurality of disclosed patentably distinct species comprising (a) handle, (b) a helmet insert (c) shin guard insert and (d) a seat. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. During a telephone conversation with Rae Lynn P. Guest on November 4, 2004 a provisional election was made with traverse to prosecute the invention of Group I with species (b) a helmet insert, claims 1, 2, 4-9 and 14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12, 13, 15, 16 and 25-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention and species.
7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
8. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, 2, 4-9 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 2, the phrase "ethyl vinyl acetate" renders claims indefinite.

Changing said phrase to the phase - - ethylene vinyl acetate - - might overcome the rejection.

10. For the purpose of following rejection the phrase "ethyl vinyl acetate copolymer" has been interpreted as - - ethylene vinyl acetate copolymer - -. If this interpretation is incorrect than applicant should show the structure of ethyl vinyl acetate copolymer.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1, 2 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker et al (U.S. Patent 5, 041,319) in view of Havens et al (U.S. Patent 4,848,566) and Shirato et al (U.S. Patent 6,090,479).

Becker et al disclose a static protective laminate comprising a layer (12) of foam comprising an antistatic agent and polyolefin (column 4, lines 22-37). Becker et al fail to

disclose polyolefin such as ethylene vinyl acetate copolymer and claimed antistatic agent and an amount of antistatic agent.

Havens et al disclose antistatic/conductive container. Havens et al disclose a layer (12) containing antistatic agent and polyolefin (col. 5 lines 25-27). Havens et al's antistatic agent includes claimed antistatic agents (col. 5, line 25 to col. 6 line 36). Havens et al polyolefin includes ethylene vinyl acetate copolymer along with polyethylene (col. 4 lines 11-15). Havens et al do not disclose foam layer (12).

Shirato et al disclose a foamed product made of polyolefin such as polyethylene, polypropylene and ethylene vinyl acetate copolymer (col. 3 lines 42, 45).

Therefore it would have been obvious to a person of ordinary skill in the art at the time of this invention made to utilize disclosure of Havens et al and Shirato et al in the invention of Becker et al to use polyolefin such as ethylene vinyl acetate copolymer or polyethylene since these polymers are equivalent.

13. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Receipt of Information Disclosure Statement filed March 4, 2004 is acknowledged and has been made of record. References AL2, AM2, AR and AS on page 3 of PTOL 1449 have been crossed-out since these references are also recited as references AL1, AM1, AR and AS on Page 1 of the PTOL 1449.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. S. Nakarani whose telephone number is (571) 272-1512. The examiner can normally be reached on Tuesday-Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (571) 272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. S. Nakarani/af
December 2, 2004



D. S. NAKARANI
PRIMARY EXAMINER